

Expedited Bill No. 45-09
Concerning: Contracts and Procurement
- Amendments
Revised: December 18, 2009 Draft No. 4
Introduced: December 1, 2009
Expires: June 1, 2011
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

By: Council President at the request of the County Executive

AN EXPEDITED ACT to:

- (1) exempt contracts for media advertisement from the Procurement Law;
- (2) exempt contracts for experts, consultants, and investigators for use in anticipation of litigation or preparation for trial from the Procurement Law;
- (3) expand the coverage of the Wage Requirements Law;
- (4) amend the time for contractors to submit information under the Wage Requirements Law;
- (5) permit the Director to investigate and verify information provided by businesses under the Local Small Business Reserve Program;
- (6) repeal a section restricting the use of County funds by contractors and grantees to influence union organizing;
- (7) amend the Prevailing Wage Law to require contractors to pay the prevailing wage in effect when the solicitation is published;
- (8) permit a using department to file a dispute under the administrative dispute resolution process; and
- (9) generally amend the County Procurement Law.

By amending

Montgomery County Code
Chapter 11B. Contracts and Procurement
Sections 11B-4, 11B-17A, 11B-18, 11B-33A, 11B-33C, 11B-35, and 11B-67.

By repealing

Montgomery County Code
Chapter 11B. Contracts and Procurement
Section 11B-33B

| | |
|------------------------------|--|
| Boldface | <i>Heading or defined term.</i> |
| <u>Underlining</u> | <i>Added to existing law by original bill.</i> |
| [Single boldface brackets] | <i>Deleted from existing law by original bill.</i> |
| <u>Double underlining</u> | <i>Added by amendment.</i> |
| [[Double boldface brackets]] | <i>Deleted from existing law or the bill by amendment.</i> |
| * * * | <i>Existing law unaffected by bill.</i> |

The County Council for Montgomery County, Maryland approves the following Act:

Sec. 1. Sections 11B-4, 11B-17A, 11B-18, 11B-33A, 11B-33C, 11B-35, 11B-64, and 11B-67 are amended and Section 11B-33B is repealed as follows:

11B-4. Exemptions.

(a) This Chapter, other than Article XII, does not apply to:

* * *

(9) obtaining the services of experts, consultants, and investigators by the County Attorney, whether in anticipation of litigation or in preparation for trial;

(10) obtaining advertising services from media sources; and

(11) any other procurement exempted from this Chapter by another law.

* * *

11B-17A. Internet Posting Requirements.

(a) Each using department must post each [planed] planned informal solicitation to purchase [of] goods, services, and construction, [valued at \$5,000 to \$25,000], with a value greater than \$10,000 and less than \$100,000, on a County web site for 5 business days before making a purchase or entering into a contract. Each purchase must be made as provided under Section 11B-13.

* * *

11B-18. Bid security.

The Director may require bid security as a condition of submitting a competitive sealed bid. The Director [determines] must determine the amount of bid security. Bid security must be:

(a) a bond provided by a surety company authorized and licensed to do business in this State;

27 * * *

28 **11B-33A. Wage requirements.**

29 * * *

30 (b) *Exceptions to coverage.* This Section does not apply to:

31 (1) [a contractor who:

32 (A) employs fewer than 10 employees when the contractor
33 submits a bid or proposal, and

34 (B) does not employ 10 or more employees at any time the
35 contract is in effect as a result of performing the contract;]

36 [(2)] a contractor who, at the time a contract is signed:

37 (A) has received less than \$50,000 from the County in the most
38 recent 12-month period; and

39 (B) will be entitled to receive less than \$50,000 from the
40 County under that contract in the next 12-month period;

41 [(3)](2) a contract with a public entity;

42 [(4)](3) a contract with a nonprofit organization that has qualified
43 for an exemption from federal income taxes under Section
44 501(c)(3) of the Internal Revenue Code;

45 [(5)](4) a non-competitive contract awarded under Section 11B-14
46 if the Chief Administrative Officer finds that the performance of
47 the contract would be significantly impaired if the wage
48 requirements of this Section applied;

49 [(6)](5) a contract for electricity, telephone, cable television, water,
50 sewer, or similar service delivered by a regulated public utility;

51 [(7)](6) a contract for services needed immediately to prevent or
52 respond to an imminent threat to public health or safety;

53 ~~[(8)](7)~~ an employer to the extent that the employer is expressly
 54 precluded from complying with this Section by the terms of any
 55 federal or state law, contract, or grant;

56 ~~[(9)](8)~~ a bridge contract entered into under Section 11B-42; or

57 ~~[(10)](9)~~ a contract entered into under a cooperative procurement
 58 under Section 11B-40.

59 The Executive by regulation may increase the amount in subsection (b)(2) to
 60 reflect increases in the cost of living.

61 (c) *Solicitation requirements.*

62 (1) Each bid or proposal to provide services to the County must
 63 specify how the contractor and each subcontractor will comply
 64 with these wage requirements, and must include sufficient funds
 65 to meet these requirements. The Director, for good cause shown,
 66 may permit a bidder or proposer to provide this information after
 67 the bid or proposal is submitted if:

68 (A) the information is provided before the time for evaluation
 69 of the bid or proposal and no later than contract award;

70 (B) the original bid or proposal price does not change; and

71 (C) the Director approves the later submission in writing.

72 (2) Each bid or proposal to provide services to the County which is
 73 submitted by an organization that is exempt from coverage under
 74 subsection (b)(4) must specify the wage the organization intends
 75 to pay to those employees who will perform direct, measurable
 76 work under the contract, and any health insurance the
 77 organization intends to provide to those employees. In evaluating
 78 the cost of a bid or proposal the County must disregard any
 79 additional cost attributable to payment of the wage requirements

of this Section by any organization that is exempt from coverage under subsection (b)(4) when compared to a bid or proposal submitted by another organization that is also exempt from coverage under subsection (b)(4).

- (3) A contractor must not split or subdivide a contract, pay an employee through a third party, or treat an employee as a subcontractor or independent contractor, to avoid the imposition of any requirement under this Section.

* * *

11B-33B. [Use of County Funds] Reserved.

[(a) Purpose. Sound fiscal management requires vigilance to ensure that County funds appropriated for a service contract or a grant award to participate in a County-funded program are expended solely for the public purpose for which they are appropriated. If County funds are appropriated for a service contract or a grant award to participate in a County-funded program, and those funds are instead used to encourage, discourage, or otherwise influence union activity or organization, the proprietary interests of the County are adversely affected. The use of County funds to encourage, discourage, or otherwise influence employees from union activity or organizing constitutes a misuse of County resources.

(b) Use of Funds. County funds appropriated for a service contract or a grant award to participate in a County-funded program must not be encumbered or used to assist, promote, deter, or otherwise influence union activity or organizing. Nothing in this Section shall be construed to prohibit the expenditure of County funds appropriated for a service

contract or a grant award from being used to perform another act required by law.

(c) Specific Restrictions. County funds for a service contract or a grant award to participate in a County-funded program must not be used to:

- (1) prepare, mail, or otherwise distribute materials related to union activity or organizing;
- (2) hire an attorney or a consultant to assist, promote, deter, or otherwise influence union activity or organizing;
- (3) encourage, discourage, or otherwise influence an employee from taking a position on union organizing in the workplace;
- (4) prevent or facilitate access to an employer's facilities or property by a labor organization or its representatives;
- (5) encourage or discourage a program manager, policy council, committee, or community or parent group from assisting or participating in a union activity or organizing.

(d) Enforcement.

(1) The Chief Administrative Officer must require each contractor or grantee to:

(A) Certify that the contractor or grantee will not expend County funds to assist, promote, deter, or otherwise influence union activity or organizing and will comply with the requirements of this Section.

(B) Keep and submit any records associated with County funds received for a service contract or a grant award to participate in a County-program necessary to show compliance. A contractor or grantee must provide these records to the County upon request.

(2) The Chief Administrative Officer must enforce this Section and investigate any complaint of a violation.

(e) Penalty. A contractor or grantee must pay the County the amount of funds expended in violation of this Section.]

* * *

11B-33C. Prevailing Wage Requirements — Construction Contracts.

* * *

(c) Payment of prevailing wage. Any contractor and subcontractor that performs direct and measurable construction work on a County financed construction contract must pay each employee at a rate equal to or more than the prevailing wage [currently] in effect when the solicitation is published for the type of work performed.

* * *

11B-35. Contract dispute resolution.

(a) *Dispute submitted.* A contractor must submit any dispute arising under a contract to the Director. The using department may submit a dispute arising under the contract to the Director.

(b) *Decision by Director.* The Director must give the contractor and the using department a written decision approving or denying the dispute in whole or in part within 45 days after receiving the dispute. If the Director does not resolve the dispute within 45 days, the dispute is denied.

(c) *Appeal to Chief Administrative Officer.*

(1) The contractor or the using department may appeal the Director's [denial of] decision resolving a dispute in writing to the Chief Administrative Officer within 30 days after receiving the

- Director's decision, or if no decision is rendered, within 75 days after submitting the dispute.
- (2) The Chief Administrative Officer must decide the appeal after considering any written information submitted by the Director, using department, and the contractor.
 - (3) The Chief Administrative Officer may hold a hearing on the appeal. The Chief Administrative Officer must complete any hearing on the appeal within:
 - (A) 60 days after receiving the appeal for disputes involving [under \$10,000] less than \$50,000;
 - (B) 90 days after receiving the appeal for disputes involving between [\$10,000] \$50,000 and \$100,000; and
 - (C) 135 days after receiving the appeal for disputes involving more than \$100,000.
 - (4) The Chief Administrative Officer may require the contractor and the using department to [produce] provide additional information about the dispute.
 - (5) The Chief Administrative Officer must give the contractor and the using department a written decision approving or denying the dispute in whole or in part within 30 days after receiving the appeal or, if a hearing is held, within 30 days after receiving the hearing officer's report. If the Chief Administrative Officer does not give the contractor and using department a written decision on the appeal within the applicable period, the dispute is denied.
- (d) *Appeal to court.*
- (1) The contractor may appeal the Chief Administrative Officer's decision to the Circuit Court under the Maryland Rules.

(2) The contractor or the County may appeal the decision of the Circuit Court to the Court of Special Appeals under State law.

(3) In the event of a statutory denial under Subsection (b), the contractor or the County may file a legal action in a court of appropriate jurisdiction. That court must hear the case *de novo*.

(e) *Consolidation of disputes.* The Director or the Chief Administrative Officer may consolidate [a contractor's] multiple disputes if:

(1) the disputes have common questions of law or fact; and

(2) the contractor or using department requests consolidation.

The time limits in this Section for the last dispute filed apply to any consolidated dispute.

* * *

11B-67. Procedures.

* * *

(d) A business must affirm and provide supporting documentation to the Director to show that it is a local small business as defined in Section 11B-65(c). The Director may investigate and verify the information provided on the application.

* * *

Sec. 2. Expedited Effective Date.

The Council declares that this legislation is necessary for the immediate protection of the public interest. This Act takes effect on January 1, 2010.

Approved:

Philip M. Andrews, President, County Council

Date

210 *Approved:*

211

Isiah Leggett, County Executive

Date

212 *This is a correct copy of Council action.*

213

Linda Lauer, Clerk of the Council

Date